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File No. O Electricity (supply) 1950

Legal DEPARTMENT

A. BRANCH

Subject:—

Opinions Under the Electricity (supply) Act 1948

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File No. O Electricity (supply) 1950

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6-4

The question raised for the R.L.A.'s consideration by the Chairman of the Rating Committee consitituted under section 57 of the Electricity (Supply)Act,1948, is whether item (ix) in clause (2)(b) of paragraph XVII of the Sixthe Schedule to the Electricity (Supply) Act,1948 includes the staff maintained by the licensee in his office as well as in the Managing Agents' office.

Para XIII (1) of the Sixthe Schedule relates to the ordinary remuneration of managing agen excluding office allowance, while clause (3) relates to an office allowance drawn by a manging agent which shall include the salaries and wages of all persons employed in the office of the managing agent but not the salaries of the engineering staff employed for the purpose of the undertaking. It is, therefore, apparent that if the "management" in item(ix) of sub-clause (b) of cluse (1) of para XVII was intended to be narrowed down to the managing agents' office staff, there is absolutely no reason why the expression "management", which has a wider significance should have been used. The managing agents' remuneration has been included in the management in item(ix) because ordinarily the expenditure on management would not include the managing agents' remuneration. It is, therefore, apparent that the words "as provided for in paragraph XIII" would qualify only the managing agents' remuneration and not management in item(ix). We will otherwise be doing violence to language; for it is obvious that paragraph XIII does not provide for management but only for the managing agents' remuneration. As observed by Lawrence J. in Southern (S) v. Aldwych Property Trust Ltd.,(1949 2 K.B. 266) the word " management" has its ordinary meaning and includes all the ordinary expenses of management of the property which fails to be taxed under Schedule A. The expression "management" in item (ix)

also appears to have been used in its ordinary sense meaning the whole staff maintained by the licensee for the administration of the undertainge This is also apparent from the fact that in assessing the clear profits, the expenses incurred by the licensee over the staff maintained for the undertaking cannot be ignored.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 4431 , dated the 1st April, 1950

Legal Department.

R.I. No. 67764/- 19-4-1950

Submitted with reference to the P.W.D. note at pages 5 to 10 ante.

2. The question is of moving Government of India to take up legislation to amend the Electricity (Supply) Act, 1948 and the P.W.D. has referred the papers to the R.L. A. for advice.

3. The P.W.D. proposes to address a letter to the Government of India, Ministry of Works , Mines & Power as per draft at pages 21 to 25 of the correspondence file requesting the Government of India to undertake legislation to amend sections 5 and 57 of and paragraph I and XVII of the Sixth Schedule to the Electricity (Sipply) Act, 1948. The reasons in support of the amendments as put forward by the P.W.D, are briefly as under :-

Section 5 :- This section provides for the constitution of the State Electricity Boards Sub-Section (3) of this section has been omitted by the Electricity (Supply Amendment Act,1949. The P.W.D. suggest that sub-sections (4) and (5) may also be omitted so that the State Government will have a free hand to make appointments as members and chairmans of the Board from the best men availabel in the field suited for the work. No limitation exists in respect of the Central Electricity Authority.

Sec.57(2)(a):This section provides for the licensees charges to consumers. The P.W.D. siggests that a proviso as follows should be inserted before the existing proviso to sub-section 2(a) :-

Provided that the State Government may, if in its opinion public interest so requires, constitute or where a Board is constituted under the Ct direct the Board to constitute, a Rating Committee at any time to examine the licensee's charges for the supply of electricity".

According to sub-section(2)(a) as it stands at present a rating committee can be constituted

(1) On a demand from the licensee, or

(2) if the Board or in its absence the State Govt. is satisfied that the licensee has failed to compay with any provisdon of the Sixth Schedule.

As regards the first course, very few licensees have applied for the constitution of a rating committee. In adopting the second course the licensee's accounts have to be examined and as the Government auditor would take a fairly long time, the consumers are likely to be out to serious inconvenience in the event of excessive charges by the licensee. The proviso is, therefore proposed to be inserted in order to safeguard the interests of the consumers.

Paragraph I of Schedule VI — The following proviso is proposed to be inserted after the existing proviso:-

"Provided further that where the licensee in order to obtain a clear profit not exceeding the amount of reasonable return, proposes to increase his rates beyong the maxima prescribed in his license, he shall obtain the pregious approval of the State Government in writing before so increasing the rates to his consumers".

The necessity of adding the proposed proviso has arisen on account of a point raised by the Matheran Electric Supply Co. According to paragraph XI of the Schedule to the Indian

Electricity Act, a licensee is not competent to charge more than the maxima fixed by his licence or such maxima as the State Government shall fix. The above provision, however, has been afected by section 57 of and the Sixthe Schedule to the Electritity (Sipply) Act, 1948. Section 57 of the said Act lays down that the provisions of the Sixthe Schedule shall be deemed to be incorporated in the licence of every licensee and any provisions of such licence ~~xxxxxxxxxxxxxxxxxxxxxxxxx~~ or of the Indian Electricity Act, 1910 or any other law agreement or instrument applicable to the licensee shall, in relation to the licensee, be void and of no effect in so far as they are inconsistent with the provisions of section 57 and the sixth schedule. Paragraph I of the sixth schedule authorise the licensee to so adjust his rates that hos clear profit in any year shall not as far as possible exceed the amount of reasonable return. Shri M.C. ~~Xxxxx~~ setalwad, the Advocate for the Matheran Electricity Supply Co., holds that in view of the changed position of law, a licensee is competent to fix rates even exceeding the maxima fixed by the licence provided they are withing the limits prescribed by paragraph I of the Sixth Schedule. From the P.W.D. file (marked L) it will appear that the question has been considered by the R.L.A. and the Advocate General, Bombay. The Advocate Ganeral Bombay is of opinion that the provision ~~xxxxxxx~~ in the licence regarding maxima still holds good. Thus the opinions differ on the point. From the said file, it appears that the opinion of the Attorney General of India on the interpretation of section 57 of the Electricity (Supply) Act, 1948 is invited by the Government of India and his opinion is still awaited (Page 89 of

of the file). The P.W.D. in its note at page 6 ante states that Shri M.C. Setalwad is the Attorney General of India and that he has adhered to his opinion given as Advocate for the company. H.M.P.W.D. and the Electricical Engineer have, therefore suggested the above amendment.

Section 57 (3)(4) & (5) - The sub-sections should be suitably amended so as to provide for the nomination by the State Government on the rating committee one representative on behlf of the consuming public. The P.W.D. states that in some cases the local municipalities and consumers' associations have demanded that they should be represented on the committees; but sub-section (4) or (5) of section does not provide for such nomination. In these sub-sections there is a provision for the nomination of the representative of the Licensees' Association. Similarly there should be statutory provision ffor the representative of consumers.

Paragraph XIII(1) of the Sixthe Schedule : This clause defines the expression "capital base", which meane the sum of certain items less certain deductions as specified in subclauses (i) and (ii) Subclause (i) reads as under :-

"(i) the amounts written off or set aside on account of depreciation of fixed assets and amonts written off in respect of intangible assets in the bookw of undertaking before or after the commencement of this Act."

The advocate for Hatheran Electricity Co. is of opinion that the language of the cl clause is not clear. In the absence if a clema after "intangible assets" it can be argued that the expression "in the books etc." has reference only to depreciation of intangible assets. The P.W.D. therefore suggests that suitable amendment should be made to make the intention clear.

4. As regards the amendment s as suggested above by the P.W.D. to the Electricity (Sapply) Act, 1948, it is submitted as under:-

(1) Re: adding a proviso to sec.57(a) - Instead of adding a orivusi as syggested, the wards "or if in its opinion the public interest so requires" should be inserte in cluse (a) after the word "provision of the Sixth Schedule".

(2) Re: adding proviso to paragraph I of the Sixth Schedule. - The amendment is suggested on the presumption that provisions of paragraph I supergede the terms of the licence. If the propision is inserted as proposed, the existing proviso to this paragaph would become meaningless.

(3) Re: Amending Sub-sections (3) & (4) & (5) of section 57 - This may be suggested.

(4) Re: amendment to Para.XVII of 6th Schedule. - The act of writing off or setting aside would

normally be in the books, so although there is no comma, the plain construction of the subclause would be that the expression "in the books of the undertaking" is connected with the depreciation of fixed assets as well as with the depreciation in respect of intangible assets. No amendment therefore need be suggested.

Id
24/5/

A.L.R.

Resubmitted

The P.W.D. has forwarded to this department copies of the Govt. of Indias letter No. El-II-1(33) dated 5th May, 1950, and of the opinion given by the Attorney General of India in the matter (pages 21 to 27 past). The Attorney General sticks to his opinion given on behalf of the Matheran Co.

Conflicting opinions have been expressed by eminent advocates on the point. The Govt. of India do not consider it desirable to express any definite opinion on the subject as it may or may not be finally accepted by Central Electricity Authority (Page 21 Part)

The Govt. of India think that a practical solution of the difficulty would be for licensee and the state Govts. to discuss the matter in a spirit of mutual understanding and agree to permit a moderate increase in rates upto a specified limit where State Govts. are satisfied that there is reasonable ground for such increase or to set up abmitio Rating Committees to examine the facts and figures and recommane whether rates;-

Legal Department

The P.W.D. have sent for R.L.A.'s scrutiny the draft letter at pages 21-25 post in which they have suggested certain amendments to the Electricity (Supply) Act, 1948. Since then the Attorney General has given his opinion on the points considered in R.L.A.'s opinion No. 30 P Confl, dated 10th October 1949 and referred to the Advocate General for favour of opinion. The attorney General adheres to the view already expressed by him. There is however no objection to suggesting amendments in the Act as proposed by the P.W.D. If the Government of Inida agree to the amendment proposed, it shall be the duty of the draftsman of the Government of India to put them in a proper legal shape.

Additional Secretary to government.

U.R. to P.W.D. No. 9216 , dated the 4th July 1950

Mr/6/4

Legal Department
R.I. No. 10990 of 28-6-50.

Submitted with reference to the U.R. from F.D. at page 324 ante.

In respect of the Addl Secy's opinion No.8116 of 15.6.50 at page 321 ante, the F.A.F.D. on page 324 ante at 'A' has raised a question as to whether the P &S.D. or F.D. should make a reference to the Govt. of Indian and calls for the opinion of the P.& S.D. in that behalf.

In the find instance, however, he has referred the papers to the R.L.S. in connection with a linked case and with regard to the question raised at 'A' on page 324 ante.

As regards the linked case it is submitted that, that case has been disposed of by 'a' branch and these papers are no ~~loyer~~ longer required in that case. 'A' branch has suit these appers to this Branch in reference to the question raised at 'A' on page 324 ante.

No remarks by this Department are required on the point. The papers may be seen and returned.

Id
1/7/

L.D.E.I. No.10672 dt.22-6-50

Submitted:

The former Baroda Govt. has handed over the Baroda Elect.Concern to the Baroda Muny., thax as a gift and has also granted to the said Muny., the Baroda Electric Supply License. This license has been granted under the State Electricity Act of 1926-27 A.D. (Samvant 1983). The Electric Comsr. has recommended that this license should be amended so as to provide that consumers requiring more than 50 K.W. power will have freedom to purchase their requirements from Govt. Dept. or an Electricity theirxrequirexmentsxfromxGovt. Ixxsuxmxthatxafter Baroda Boardxthatxmayxbexsetxupxbyx Govt Board that may be set up by Govt. It seems that after the Electricity Board is fromed this provision will become void on account of its being inconsistent with sect.19(b) of the Electricity (Supply) Act,1948 He has stated that the object can be secured if the consent of the license is obtained after the Act comes into force. He has therefore suggested that it should be made obligatory on the Baroda licensee to enter into a formal agreement on the above lines with the Board when it is formed.

The question for E.L.A's consideration is whether consent obtained at this stage when sect.19(b) of the Electricity(Supply) Act,1948 is not operative, making it obligatory on the Baroda licensee to enter into an agreement on the required lines with the Barad, when it is formed will be binding on the licensee or not when sect.19.(b) of the Electricity(Supply) Act,1948 becomes operative.

The Baroda Electric license already contains a provision to the effect that nothing in the said license shall be construed to prevent any person requiring 50 KWS or more of electric power, from purchasing his power requirements from any Govt.Dept. or an Electricity Board that

may hereafter be set up by Govt.for his own industrial domestic or other uses.(see Proviso to clause 7). In view of this, amendment of the license is not nocy. The proviso further provides "However the above shall not be repugnant to the provisions of the Electricity (Supply) Act,1948 the Govt. of India". This in fact means that the above said provision will not apply when the Elect. Supply Act,1948 comes into force. Apart from this, sect.70(1) of the Elec.Supply Act,1948 lays down as fallows:-

"No provision of the Indian Electricity Act, 1910 (IX of 1910) or of any rules made there under shall or of any instrument having effect by virtue of such law or rule shall so far as it is inconsistent with any of the provisions of this Act have any effect."

The agreement proposed to be entered into with the Baroda licensee being inconsistent with proviso(b) to sect.19 of the Act will therefore become invalid when the Electricity Supply Act is applied to Baroda. As provided in proviso (b) the consent of the licensee will have to be obtained in cases where the conditions laid down therein do not prevail. In view of this no contact should be entered into with the Baroda licensee.

If may stated here that H.M.,P.W.D. wished to discuss this case with R.L.A. as soon as possible (see Slip 'c')

Id.
4/8/

AiL. R.

Reply may be :--

An agreement of the kind as proposed even if executed by the baroda Electric Licensee after the Baard is formed, would be inofcative, if being inconsistent with the Provisions of the proviso(b) of 519 (1) of ihe Electricity (Supply) Act,1948 (See section 70 (1) of that Act,) consequently the question of requiring the Baroda Electric Licensee to agree to the exicution of such agreement after the Board is formed doned not obeviously arise

Office of the R.L.A.

Electricity (Supply) Act, 1948- Proviso (b) of section 19(1) and section 70(1)

An agreement of the kind as proposed even if executed by the Baroda Electriv Licensee after the Board is formed, would be inoperative, it being inconsistent with the provisions of the proviso (b) of section 19(1) of the Electricity (Supply) Act, 1948 (see section 70 (1) of that Act). Consequently, the question of requiring the Baroda Electric Licensee to agree to the execution of such agreement after the Board is formed would not obviously arise.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 11300 , dated 9th August 1950 .

MB/6-4

Office of the N.L.A.

The questions referred to the N.L.A. for advice are,-

(1) Whether for the purpose of determining the reasonable return under the Electricity (Supply) Act, 1948 (54 of 1948; a licensee can include in the capital base the loss incurred by him by the sale of fixed asset;

(2) Whether any expenses incurred by a licensee on account of the issue of debentures and on account of brokerage for issue of debentures can be included in "intangible assests" as defined in the Sixth Schedule to the Act;

(3) Whether interest paid by a licensee on loans raised from private individuals and interests paid on debenture issued by him can be treated as an item of expenditure either under item (iv) or (v) or (xi) of clause (b) of sub-para (2) of para XVII in the Sixth Schedule to the Act;

(2) Question No.1. The expression "capital base" referred to in item (a) of para XVII (2) of the Sixth Schedule to the Electricity (Supply)Act, 1948 is defined in para XVII (1) as follows:-

" Capital base means the sum of (a) the original cost of fixed assets, (b) the cost of intangible assets, (c) the original cost of works in progress, (d) the amounts of investments compulsorily made and (e) an amount on account of working capital, minus (i) the amount written off or set aside on account of depreciation of fixed assets and amounts written off in respect of intangible assets, and (2) the amount of loans advanced by the Board, Although the originala cost of fixed assets goes to form the capital base, as pointed out by the Electrical Engineer when an assest is sold that assest is not employed in the business of electricity. Under the definition of "reasonable return" the standard rate of

5 % is to be applied to the capital base at the end of the year in respect of which the accounts are being calculated. The value of a plant or machine sold during the course of the year cannot be taken into consideration in fixing the capital base. The loss incurred by a licensee in the disposal of such an asset cannot [illegible] at appears, be included in finding out the capital base. The view taken by the Electrical Engineer is correct.

3. The next question is about the interpretation of "intangible assets"- whether expenses on account of issue of debentur s and on account of brokerage for issue of debentures can be said to be intangible assets. As defined in para XVII(4) that expression means underwriter's commission and such preliminary and promotional expenditure shown as a debit in the capital account of the undertaking, as has fairly arisen in promoting the business of electricity supply excluding any amount paid on account of goodwill. . The expenditure incurred in the preliminary work neces.ary to the floatation of a company appears to be covered by para XVII (4) The expenditure incurred for the purpose of raising loans subseqyently after the company is floated would not be admissible. Para XDII (4) has to be read as a whole and "underwriter's commmssion" cannot be detached from the latter part. The view taken by the Electrical Engineer appears to be correct.

4. The last question is whather interest paid on loans raised from private individuals and on debentires can fall under item (iv),(v) or(xi) of para XVII (2 (b) This question arises on ccount of the definition of 'clear profit' which means the difference ebtween the amount of income and the sum of expenditure plus specific appropriation made as mentioned therein

The items of expenditure are specified in para XVII (2) (b) Item (iv) is interest on loans advanced by the Board under sub-para (2) of para 1 of the First Schedule and item (v) is interest on security deposits. As stated by the Electrical Engineer the interest paid by a licensee on loans received from private individuals and on debentures cannot fall under either of these items. Item (xi) however specifies other expenses admissible under the law for the time being in force in the assessment of Indian Income Tax and arising from and ancillary or incidental to the business of electricity supply. Under section 10(2)(iii) of the Income-tax act, 1922, the amount of interest paid on capital borrowed for the purposes of the business is excluded for the purpose of fixing the amount of income-tax. If the loans referred to viz. from private individuals and the debentures are raised for the purpose of facilitating the carrying on the business of supplying energy, it does not appear how they cannot be deemed to be items of expenditure for the purposes of determining "Clear profit" under the Electricity (Supply) Act, 1948. The view expressed by the Electrical Engineer on this point does not appear to be correct.

Remer

U.R. to P.W.D. No.

Id.
8/8/

Office of the R.L.A.

The R.L.A. does not consider it necessary to reconsider the opinion expressed by him to the Secretary of the Rating Committee or to make a reference to the Advocate General. Incidentally it might be noted that the R.L.A.'s view has also been endorsed by the Electrical Commissioner. Whatever may be the position hereafter, the argument based on the express mention of interests in items (iv) and (v) of paragraph XVII (2)(b) of the Sixthe Schedule should not be allowed to control the ordinary meaning of item (xi)

2. As regards the double advantage, there should be no practical difficulty in following the course which the R.L.A. had suggested to the Secretary of the Rating Committee.

Remembrancer of Legal Affairs.

U.O. to P.W.C. No. 1549 , dated 24th January 1951.

1d

24/1/

Legal Department.

R.I. No. 17535 of 29-7-50

Submitted with reference to P.W.D. note at page 77 ante.

The question raised for the consideration of the R.L.A. is: whether the Rating committee constituted under section 57(2) of the Electricity (Supply act,1948, for Examining the charges of the Fateh Electric Supply Co.Ltd., for the supply of electricity and to report thereon to Government, can be dissolved under any provisions of law.

Under section 57(1)(a) of the Electricity (Supply) Act,1948, the Provincial Government has been invested with the power of constituting a rating committee, eitheron the failure of the licensee to comply with any provision of Sixth Schedule to the Act, ~~xxxx

has requested Govt. to treat their request for rating Committee as cancelled, the basis for the constitution of the Committee has disappeared. In the circumstances, there would be no legal objection to Govt. to dissolve the rating Committee; since the authority having for the time being power to make the appointment shall also have ~~xiwx~~ power to suspend or dismiss any person appointed in exercise of that power. (see Sec. 16, General Clauses Act, 1897). "Where an act confers a jurisdiction, it impliedly also grants the power of doing all such acts or employing such means, as are essentially necessary to its execution" (Maxwell p. 309)

The view taken by the Secretary, P.W.D. appears to be correct.

Id.
12/10

A.L.R.

Reply may be ;-

There would be no legal objection to Govt. dissolving the Rating Committee in the present case when the licensee at whose instance it was appointed, has withdrawn his request.

Id.
12/10

R.L.A.

13/10/

U.R. to P.W.D. No. 14521, dated 17-10-1950